

G. PROTECTIVE SEARCH

A warrantless search for the protection of law enforcement officers, as well as the public, may be conducted if the exigency of a situation makes it imperative to do so. This exception is also referred to as the "emergency" exception to the warrant requirement.

PROTECTIVE SEARCH **SELECTED CASES**

GALLMEYER v State (Emergency Entry to Private Residence), bulletin no. 54. Intoxicated subject pointed a gun at his spouse which subsequently forced her to leave the residence without taking her 15-month-old child with her. Prior to police arrival at residence, the subject placed the child on the porch. The responding officer, who noticed that the subject was armed, knocked on the door in an attempt to calm the subject but he refused to admit the officer. The officer entered the house, struggled with the subject, removed the gun and seized a second gun that the subject attempted to obtain from the kitchen. The Court, considering the subject's use of guns, upheld the warrantless entry due to the emergency of the situation.

JOHNSON v State (Warrantless Seizure of a Person From Private Residence), bulletin no. 66. Rape victim escaped from suspect's residence, summoned the police and reported that suspect had threatened to "blow her away" if she reported the incident. The suspect appeared at the second level window when the police knocked on the door but did not respond. The officers made a warrantless entry to affect the arrest. The Court upheld this emergency entry as an "exigent circumstance" because of the threat of violence and the possibility of destruction of evidence.

MURDOCK & ROBINSON v State (Protective Search of Residence), bulletin no. 69. In course of investigating a case involving weapons, officers approached one of the suspect's residence and were voluntarily allowed to enter. After entering, officers heard noises emanating from another room. Further investigation led to a bedroom in which several suspects were discovered hiding. The officers checked under the bed for additional suspects and discovered a number of weapons, which they seized. Later identification of the weapons indicated that they had been taken in a recent robbery and one had been used in a recent robbery homicide. The Court ruled that entry was made with consent and the subsequent search upheld as protective and the discovery of weapons was inadvertently in their plain view while looking for additional suspects.

WAY v State (Seizure, handcuffing and requiring identification for persons present while police search for fugitive; special handling for person known by officer to have previously had a weapon), bulletin no. 290. Police have responded to an apartment where they have been informed that a fugitive is located. All of the occupants are removed from the apartment, taken outside, forced to lie on the ground where they are placed in handcuffs. When the police discover that the fugitive is no longer present they pat-down the persons on the ground and require them to identify themselves prior to releasing them. One of the officers recognizes WAY (see bulletin no. 288) from a traffic stop he had made the previous week. At that time WAY's van contained components for a methamphetamine lab and a loaded handgun. Based on this information the officer took WAY aside for special handling. The officer observed a syringe in WAY's pocket. The syringe had blood on the barrel. A pat-down lead to the discovery of cocaine on his person. The court ruled that based on the officer's knowledge of the previous event (the traffic stop) that WAY was associated with drugs and the weapon. this special handling was permissible.

MATTERN v State (no bulletin). Officers responding to a burglary noticed a van leaving the area. The officers stopped the suspected van, looked in the back and discovered clothing and other items later identified as the stolen goods. The Court ruled the evidence admissible because the officers, for their own protection, had a right to look in the van for possible suspects and in doing so inadvertently discovered evidence that was in their plain view.

Maryland v BUIE (Protective Search of Residence), bulletin no. 139. When executing a warrant in a home or building where there is reasonable suspicion that other people might be in the house which could pose a danger to the arresting officers, a limited sweep of adjoining portions of the house where "an attack could be launched" can be done. This protective sweep is not a full search incident to arrest, but any material in plain view which the officer had probable cause was evidence of a crime can be seized.

BRAND v State (Protective Search of Residence Requires Belief that Area to be Swept Harbors an Individual That Poses a Danger), bulletin no. 333. Police responded to a residence to investigate a threat of suicide. On arrival, the alleged victim was outside the residence and paramedics were already on location treating the subject victim. The subject victim became agitated and ran back into the house. Officers attempted to pursue the subject into the house but were met at the door by Brand who said he did not want them in the house. The officers subsequently handcuffed Brand. The subject victim had by this time come out of the house and she too was subdued. One of the officers smelled what appeared to be marijuana coming from the residence. The officers conducted a "protective search" of the residence and discovered a grow-operation. BRAND, who had been tased by the officers, was in the rear of an ambulance awaiting transport to the hospital. One of the officers asked consent (after the protective search) to search his residence. He initially declined but when the officer said he would get a search warrant BRAND consented. All of the evidence (and his consent to search) must be suppressed. Police may not enter a home for a protective sweep unless they have a reasonable belief that there is an individual inside who could put them in danger. All of the officers involved in this case testified that they did not have any reason to believe that there was anyone else in the home.

EARLEY v State (Protective Search of Residence Absent Reasonable Cause), bulletin no. 140. When officers were investigating a crime in an apartment, their search of the residence to ensure their safety did not satisfy the protective search doctrine, i.e. reasonable suspicion that their safety was in danger and a search narrowly limited to areas where dangerous persons could be found. There must be specific and articulable facts which would suggest that an armed and dangerous person is concealed somewhere in the residence.